

## § 1780.51

### § 1780.51 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact that may be judicially noticed by a United States district court and any material information in the official public records of any Federal or State government agency.

(2) All matters officially noticed by the presiding officer or the Director shall appear on the record.

(3) If official notice is requested of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a)(1) of this section, any document, including a report of examination, oversight activity, inspection, or visitation, prepared by OFHEO or by another Federal or State financial institutions regulatory agency is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the presiding officer's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be time-

## 12 CFR Ch. XVII (1–1–10 Edition)

ly made and rulings on all objections must appear in the record.

(2) When an objection to a question or line of questioning is sustained, the examining representative of record may make a specific proffer on the record of what he expected to prove by the expected testimony of the witness. The proffer may be by representation of the representative or by direct interrogation of the witness.

(3) The presiding officer shall retain rejected exhibits, adequately marked for identification, for the record and transmit such exhibits to the Director.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing and that witness has testified in a deposition in accordance with § 1780.29, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the presiding officer may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

### § 1780.52 Post hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the presiding officer shall serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the presiding officer proposed findings of fact, proposed conclusions